

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 226 OF 2006

Shri C.R. Vasudevan ...Petitioner
V/s.
Shri Ramprasad Kantaprasad Jaiswar & Anr...Respondents

Shri A.N. Jakhadi i/b. Shri U.S. Upadhyay for the
Petitioner.
Shri Ashok Shetty with Ms.Rita Joshi with Shri T.
Shetty for Respondent No.1.
Shri Y.S. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 10, 2007

P.C. :-

. The petitioner is challenging an order passed by the 5th Labour Court in Misc.Criminal Complaint (ULP) No.191/2001 who by the said order was pleased to reject the application filed by the petitioner herein for quashing the process which was issued against him. He is also challenging the order passed by the Industrial Court, Mumbai, in Revision Application (ULP) No.31/2005 whereby the Industrial Court was pleased to confirm the order which was passed by the 5th Labour Court in Complaint (ULP) No.191/2001.

2. Brief facts are that by order dated 10th May,

2001, the Presiding Officer, 7th Labour Court, Mumbai, passed an ex parte order directing the respondent-Binni International and its proprietor to reinstate 16 workmen with full backwages with continuity of service. In spite of the said order, the workmen were not reinstated and therefore, the respondent herein filed the complaint under Section 48 of MRTU and PULP Act before the 5th Labour Court. The process was issued by the Labour Court in the said matter. After the process was issued, an application was filed by the petitioner herein stating therein that the process was wrongly issued against him. It is the case of the petitioner herein that the complaint was filed against Binni International and its C.R. Vasudevan in his capacity as proprietor of the said propriety concern. It was contended in the application that accused no.2 that Shri C.R. Vasudevan was wrongly served with the process and it was contended that he was Director of M/s. Binni Impex Pvt.Ltd. It was further submitted that the said firm ceased to exist after 12th September, 1997 and he was wrongly served with the process of the Court and therefore, it was returned.

3. The submission made by the learned Counsel appearing on behalf of the petitioner cannot be accepted. The petitioner has already filed a complaint for setting aside the exparte order passed by the Labour Court in the complaint which is taken out by the respondent. It has been noted in the impugned order that though notice was sent by the Bailiff to the petitioner herein, the petitioner refused to accept the said notice. This indicates that the petitioner was aware of the said proceedings and deliberately did not remain present in the Court. It was always open for the petitioner to have appeared before the Court and could have adduced evidence to show that the petitioner was distinct entity. However, this was not done. Hence, there is no reason to interfere with the order of issuance of process. Further, the petitioner has already filed an application for setting aside the exparte order which is pending in the Labour Court. Hence, no reason to interfere with the impugned order at this stage.

4. Writ Petition, accordingly, is dismissed. Rule is discharged.

5. The learned Counsel for the petitioner submits that the restoration application filed by the petitioner is kept for hearing on Friday before the 7th Labour Court, Mumbai.

6. The Labour Court is directed to decide the application, as expeditiously as possible and in any case, within a period of one month.

(V.M. KANADE, J.)